DOCUMENT RESUME

ED 116 562 HE 006 969

AUTHOR Saunders, Charles B., Jr.
TITLE Should Higher Education Have a Role in Higher Education Policy?
PUB DATE 6 Nov 75
NOTE 13p.; Paper presented at the Annual Meeting of the North Carolina Association of Colleges and Universities (Boone, North Carolina, November 1975)

EDRS PRICE MF-$0.76 HC-$1.58 Plus Postage
DESCRIPTORS College Role; Consultants; *Cooperative Planning; *Educational Legislation; *Federal Legislation; Government Role; *Higher Education; *Policy Formation

ABSTRACT

Federal legislation and court decisions over the past two decades have exerted a pervasive influence on the whole fabric of higher education in America. Increasing restrictions have been placed on the qualities of freedom and diversity, which this nation has historically valued in its institutions of higher education. But there is also a heightened awareness of the enormous powers the people have entrusted to their government, and the potential and actual dangers of abuse of these powers. The persistent failure by the executive branch to consult the education community on matters which affect it, particularly in the development of regulations implementing Federal programs, is a cause of these problems and a reason for demanding broader participation in the decision making process. With such consultation, the college community would obtain a helpful understanding of the problems the regulations are intended to address and program officials would obtain an early warning of possible difficulties that might arise in administering the regulations. (Author/KE)

****
* Documents acquired by ERIC include many informal unpublished *
* materials not available from other sources. ERIC makes every effort *
* to obtain the best copy available. Nevertheless, items of marginal *
* reproducibility are often encountered and this affects the quality *
* of the microfiche and hardcopy reproductions ERIC makes available *
* via the ERIC Document Reproduction Service (EDRS). EDRS is not *
* responsible for the quality of the original document. Reproductions *
* supplied by EDRS are the best that can be made from the original. *
****

ED116562

SHOULD HIGHER EDUCATION HAVE A ROLE IN HIGHER EDUCATION POLICY?

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

by

Charles B. Saunders, Jr.
Director of Governmental Relations
American Council on Education

It is both ominous and encouraging that this meeting is examining patterns of change imposed on higher education by recent statutes and court decisions.

It is ominous because those patterns reveal increasing restrictions on the qualities of freedom and diversity which this nation has historically valued in its institutions of higher education.

It is encouraging because those same patterns are receiving increasing attention, not only in conferences such as this but in the legislative and executive branches of the Federal government.

From the discussions here today I would assume that one pattern has emerged most clearly: that Federal legislation and court decisions over the past two decades have exerted a pervasive influence on the whole fabric of higher education in America. The catalogue of laws and court decisions spans the admission of students, the protection of their rights, and the nature of the programs they enroll in; the hiring and termination of faculty; and the governance of institutions by administrators and trustees.

Address at the Annual Meeting of the North Carolina Association of Colleges and Universities, Appalachian State University, Boone, North Carolina, November 6, 1975.

HE 006 969

The pattern mirrors another, observable in the larger society. There is a heightened awareness of the enormous powers which the people have entrusted to their government, and the potential and actual dangers of abuse of these powers.

Still another pattern is evident from a national perspective: a persistent failure by the executive branch to consult the education community on matters which affect it deeply, particularly in the development of regulations implementing Federal programs. This failure, I submit, is at once a cause of the problems we are discussing today and a reason for demanding broader participation in the decisionmaking process. This is why I am addressing my remarks to the question: "Should higher education have a role in higher education policy?"

It might seem unnecessary in a democracy to suggest that we should be consulted on matters affecting our future. But in recent years crucial decisions concerning higher education have been made in the executive branch by a succession of advertising men, lawyers, budgeteers and policy analysts with little sensitivity to educational needs and concerns, and little inclination to consult the principal officials responsible for Federal education programs and policies.

The situation was starkly summarized in a comment made to then-Assistant Secretary for Education Sidney P. Marland, Jr. at a meeting with education association representatives. After listening to Marland's description of his tireless efforts to advance the cause of education within the executive branch, one of them rose to tell him: "Sid, we know you're trying. But the truth is, no one at the policy level is listening to you. We're just wasting our time here talking to you--we should be talking to someone at OMB or the White House."

Even if such changes were to be made, however, and the principal education officials of the Department became in fact the principal advisers on Federal education policy, we would be no farther along unless those officials were prepared to answer affirmatively to the question:

Should the education community have a say in Federal education policy?

If consultation with the education bureaucracy has been sadly lacking, consultation with the education community outside of government has been scandalously deficient in recent years. The latter development is far more serious, and far more subversive of sound policymaking for education.

Much of this subversion has been going on quietly for years with little notice from the community. We are only just beginning to recognize that Federal programs and policies which were never designed to affect higher education have had an impact which is just as important as the programs and policies of the Education Division and the several other agencies which conduct significant education support programs.

In the case of some programs and policies, it may be impossible to judge their impact for many years. For example, a startling finding of a current ACE study is that the imputed tax advantage colleges and universities have historically received from their nonprofit status has been substantially depreciated over the last 15 years by the gradual shift of Federal tax policy from taxing income to taxing employment. This has not come about because of any deliberate policy decision to dilute the tax advantage of nonprofit institutions; it has just happened gradually over the years, as Federal budget receipts derived from taxes on employment have doubled from 15 percent to 30 percent and corporate income taxes have declined from 23 percent to 15 percent of Federal receipts. Nevertheless, to the extent that new cost burdens have been imposed on colleges and universities, this is education policymaking by omission.

Should Federal education officials have a say in Federal education policy?

One might suppose that there should be no need to raise the question. But there is, because Federal education officials have had entirely too little input in Federal education decisions over the last few years. So the question must be raised, and it cannot be answered affirmatively until visible steps have been taken by the Secretary of HEW and the President (or Congress) to upgrade the status of the Education Division within the bureaucracy, and to assure that the principal officials of the Division are in fact the principal education advisers to the Secretary and the White House.

That is why ACE has made specific recommendations for changes in the organization of the Education Division to the authorizing committees of the House and Senate. As we testified:

> "A central factor in the continuing lack of leadership and support for education from the executive branch is the low status of the bureaus and programs of the Education Division in the Department of Health, Education and Welfare. While the 1972 Amendments established the office of Assistant Secretary for Education to direct the Education Division, the resulting reorganization actually diminished the authority of the Commissioner of Education by placing a new bureaucracy between the Commissioner and the Secretary. At the same time, responsibility for most education programs was retained in the office of the Commissioner, rendering the Assistant Secretary virtually powerless without program authority.
>
> The Education Division should be headed by a single official, with higher rank and with clear authority for all of the programs of the Division. We recommend that this be accomplished by providing Executive Level III (Under Secretary) rank for the head of the Division, who would be designated Commissioner of Education to restore the historic significance of the title as the principal Federal education official.
>
> We also recommend that Deputy Commissioners be provided at Executive Level IV (Assistant Secretary) rank in five functional areas: Elementary and Secondary Education, Postsecondary Education, Handicapped, Occupational/Adult, and Research. The Deputy Commissioner for Research would serve as Director of the National Institute of Education. In effect, these steps would abolish the Office of Education and reconstitute the Education Division as a single, unified agency with greater status in the HEW bureaucracy."

A more recent example was President Ford's imposition of import tariffs on oil last winter. The Administration proposed elaborate mechanisms to rebate the increase to corporations, individuals, and state and local governments, but not to nonprofit institutions--raising the possibility of disproportionately higher energy burdens for the education community than for other sectors of the economy. The tariff and the rebate plans have since been shelved by the stalemate between the Administration and the Congress on energy policy, but the special energy needs and problems of nonprofit institutions have not yet been recognized in the Federal Energy Administration's planning of allocation and pricing policies.

Meanwhile an array of Federally-mandated social programs have been enacted in recent years which, however necessary or desirable, are imposing significant cumulative costs on colleges and universities. The costs of compliance with improved standards of employee safety and health, promulgated by the U.S. Occupational Safety and Health Administration, are estimated to be over $3 billion. The costs of redesigning, remodeling, and replacing outdated academic facilities to make them more energy-efficient is estimated at over $8 billion. The costs of other programs may be no less considerable, if less direct. For instance, who can estimate the eventual cost of training the necessary staff to the higher levels of sophistication needed to carry out the administration, record-keeping and reporting requirements for student assistance, employee pensions, minimum wage, unemployment compensation, and other programs?

Of course such Federally-mandated programs embody national policy objectives and commitments which are fully shared by the higher education community. My point is that their administration involves costs which may often be difficult to estimate, but are seldom even considered by Congress in writing legislation, or by the executive agencies in drafting regulations.

Therefore we need to develop better accounting techniques to identify and project the cost impact of current Federal programs. Armed with such data, we can then petition the Congress for realistic administrative allowances to compensate institutions of higher education for administration of Federally-mandated programs.

And if, as is now apparent, higher education's problems with the Federal government are increasingly located in agencies, committees, and issues which are unfamiliar to us, we must enlarge our own areas of expertise, monitor legislative and executive activities more closely, and prepare ourselves to identify the special concerns of the higher education community across the entire range of governmental activities.

But what of the subversion of sound education policymaking that is occurring in our own back yard?

--For example, the Guaranteed Student Loan regulations which, under the guise of "consumer protection" but without specific statutory authority, have imposed costly and essentially silly requirements on how institutions must deal with their alumni, what questions they must ask them, and what information about their salaries and employment must be made available to prospective students.

--Or the heavy-handed blackmail attempted by the Office for Civil Rights last summer when it sought to force a number of major universities to accept new affirmative action requirements--which the Washington Post called "preposterous and pointless"--or lose large Federal contracts in the closing days of fiscal 1975.

--Or the secret development by OE bureaucrats of proposed legislation granting the Commissioner broad new powers to impose financial, administrative, and academic standards on institutions of higher education to be eligible for Federal funds. Although the higher education community was not consulted on this

issue of such obviously fundamental importance, the draft legislation was cleared through the highest levels of the Department until Secretary Mathews agreed to reconsider it.

--Or the observation by Earl Cheit, Associate Director of the Carnegie Council on Policy Studies in Higher Education, that "review procedures, regulation, litigation and demands for information now command so much of the energies and attention of college and university officials, it is easy to forget that for most of its history higher education in the U.S. was a movement, not a bureaucracy."

In the opinion of the Chairman of the House Subcommittee on Postsecondary Education, "nowhere more than in the field of education have we seen bureaucracy run rampant." What can be done to reverse the pattern of increasing regulation, unnecessary meddling, and needless bureaucratic requirements that are fouling the very programs designed to assist our own institutions and students?

We must insist, first of all, that the higher education community play a larger role in the development of Federal education policy. Relationships between the community and the Federal bureaucracy, which a decade ago could be described as collegial, open, and easy, have in recent years become strained, stiff, and arms-length. For at least two years at HEW, meaningful consultation in advance on issues of significance has been virtually prohibited.

As a result, draft regulations appear in the Federal Register without warning, bursting like bombshells on an education community which, after recovering from shock, must scurry to submit hastily-assembled comments before the 30-day period ends. Then the agency, having committed its honor to specific language which it has developed in secret, naturally seeks to affirm the validity of its judgments by publishing final regulations with as few changes as possible.

This process, as it has developed in recent years, is simultaneously frightening, stupid, and wrong.

In the first place, regulation-writing for education programs should not be left entirely to the Department of HEW because it has little competence in education. This is not to denigrate the abilities of the hundreds of conscientious and committed officials who do their best to administer Federal education programs: it is simply to recognize that their expertise lies primarily in the administration of those programs--not the administration of academic institutions and policies. They should not be expected to be a principal source of wisdom and guidance in shaping new educational approaches, strengthening academic standards, or managing an educational enterprise.

We should look to Federal officials for instruction in the goals and criteria of specific programs, the terms and conditions of funding, and procedures and timetables for application. We should expect them to be expert in seeing that our applications are processed with minimum delay, and that our checks arrive on time. We can also expect them to be sensitive to the ways in which the actions of their agency affect colleges and universities throughout the country. But we should not expect them to be expert in the global problems of higher education, or look to them for solutions. In fact we should be skeptical of their presumed expertise or proposed solutions, lest we suddenly find ourselves beholden to a national ministry dictating our educational standards.

In the second place, regulation-writing was never intended to operate in the secrecy which has characterized the process at HEW. Historically, it was intended to be based on close and continuous communication between the Federal drafters and the interest groups concerned. The 30-day comment period was designed, not to freeze out these constituent groups, but to give individual citizens around the country an opportunity to voice their reactions. It was assumed that interest groups would be consulted from the earliest stages of drafting--precisely because Federal officials could not be presumed to know how regulations could best be coordinated with the day-to-day functioning of the regulated institutions.

Even if such competence could be assumed (which, as I have noted, it cannot and should not), why the secrecy in the first place? Why make a mystery of the regulation-drafting process? What awful event will occur if the education community learns in advance what the Federal bureaucrats would require of them? --or if the bureaucrats learn in advance that their draft language is workable?

Secrecy can only accentuate what Secretary of Labor John Dunlop calls "the natural arrogance of regulators." Secretary Dunlop has already instructed his subordinates that "It is vital...that those who write regulations or design enforcement or compliance programs in the Department more fully appreciate the point of view, perspective and experience of those who are faced with the obligation to live under often complex statutes and regulations."

Can anyone think of any issue requiring regulation of colleges and universities which could not be resolved more effectively if the entire drafting process were conducted in full consultation with the higher education community?

With such consultation, beginning before any draft is set to paper, the college community would obtain a helpful understanding of the problems the regulations are intended to address. Program officials would obtain an early warning of possible difficulties which might arise in administering the regulations. If preliminary drafting attempts were then reviewed by knowledgeable persons from the community through as many revisions as necessary, the proposed regulations when published in the Federal Register would already reflect a workable accommodation of program officials and campus administrators, and the comment period would serve to identify perfecting technical changes before final publication.

A question may be raised whether such collegial relationships between regulators and regulated might constitute conflict of interest. It seems to me that they do not in the case of colleges and universities, which are classified as

charitable nonprofit organizations under the tax code and are essentially conducting business in the public interest. The public interest requires regulation, most certainly, but it also requires that the institutions administer their affairs with maximum effectiveness and efficiency. This implies a better balance than presently exists, with Federal regulations imposing such complex, costly, and often contradictory administrative burdens that they actually undermine the conduct of the institution's main business of education.

Neither do I suggest that the education community should write the regulations which implement Federal education programs. If we cite the limitations of the Federal bureaucracy, we must also concede that all wisdom does not reside in the academic community. Of course the concerns of administrators must be tested against those of faculty, students, and the general public, as well as against the broader objectives which officials of Federal, state and local governments are responsible for articulating. Each of these concerns must be weighed in the process of regulation-drafting if it is to function in proper balance. The process should not and need not produce a set of arbitrarily-imposed Federal requirements: it should provide a mutually-acceptable set of guidelines for implementing specific national goals with a minimum of inconvenience and a maximum regard for the individuals and institutions affected.

It is encouraging that HEW's new Secretary, David Mathews, has expressed interest in reopening lines of communication and consultation with the education community (although he has not yet followed Secretary Dunlop's example and instructed his Department to do so). Much can be accomplished by the development of more open, good-faith efforts to exchange views on troublesome issues. But such informal understandings are as impermanent as HEW secretaries or commissioners. Futhermore, they do not begin to address the need for better coordination between HEW and the various other departments and agencies which presume to enforce their often

duplicative and sometimes conflicting standards on the Nation's colleges and universities.

More encouraging is the growing congressional interest in legislation which would amend the Administrative Procedure Act to place the burden of proof on Federal agencies to show that their regulations are in compliance with legislative intent. Other bills recently introduced would provide an extended period of congressional review for all agency regulations before they become final.

Certainly some new mechanisms are needed to impose limits on Federal regulations, check the "natural arrogance" of the regulators, require coordination or consolidation of regulatory agencies, and make the bureaucratic advocates of accountability accountable for what they would have us do.

We must recognize that, in part, our regulatory problems stem from our own failure to establish common criteria for accountability to the public. We need an effective means for deriving consensus as to what constitutes reasonable and acceptable standards for the administration and accounting of Federal funds. Once that consensus is reached, we need to establish procedures for voluntary enforcement of those standards wherever possible. Where Federal enforcement is necessary, we need a mechanism for collective action which would enable the higher education community to enter formal or informal negotiations with program officials to obtain more reasonable regulatory provisions.

We may also need to ask Congress for further legislative protection against unwarranted requirements. To assure that regulations are prepared with advance consultation, for example, the appointment of representative ad hoc consultant panels to assist with the drafting could be mandated. And to make certain that agencies think through the possible implications of new regulations before they become final, economic impact statements might be required by law to accompany the publication of all proposed regulations.

These are some steps which might be taken to assure a role for the higher education community in the development of Federal programs and policies affecting higher education. They would require some significant changes in the way our pluralistic and traditionally autonomous network of institutions relate to each other and to the larger community. But perhaps such changes are necessary in order to restore some meaning to the Federal statute which declares:

> "No provision (of the education laws) shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution..."
>
> (Sec. 432, General Education Provisions Act)

We all share responsibility to see that the law of the land means what it says.